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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN JOSE PULIDO, JR.,

Defendant and Appellant.

F056989

(Super. Ct. No. VCF207407)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Paul A. Vortmann and Joseph A. Kalashian, Judges.†

David McNeil Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Dawson, J. and Kane, J.

† Judge Vortmann ruled on the motion to suppress; Judge Kalashian imposed sentence.

Appellant Juan Jose Pulido, Jr. pled no contest to possessing marijuana for sale (Health & Saf. Code, § 11359), admitted a prior strike offense (Pen. Code, §§ 667.5, subds. (b)-(i), 1170.12, subds. (a)-(d)), and received a two-year prison sentence doubled to four years because of the prior strike conviction. On appeal, he challenges the court's denial of his motion to suppress evidence. We affirm.

FACTS¹

On the evening of July 17, 2008, Sergeant Manual Cavazos received a dispatch call to 837 South Elm in Pixley. He was informed that there was an unknown male subject holding a family hostage with a shotgun inside the residence. He arrived at the location and located two females through an open front door. They did not appear to be distressed and he did not see anyone being held at gunpoint. He contacted dispatch and asked that they recontact the 911 caller. He was then informed that dispatch got a busy signal, so he asked for the coordinates of where the call originated. He was given Global Positioning System (GPS) coordinates of a street directly to the west of where he was located.

Cavazos went to the 800 block of Maple Street and located what he believed to be 837 South Maple. He saw an "83" on the mailbox, but could not determine what the other number was. A backup officer, Deputy Pumarino, arrived and the two of them walked through the gate. As they did so, they smelled marijuana. They had their guns drawn. Cavazos walked to the south end of the house while Pumarino walked to the front door and knocked. Cavazos peeked through a window that was partially open and smelled the strong odor of marijuana, saw marijuana branches hanging on a line, and marijuana lying on top of a dresser.

¹ The factual information pertaining to the motion to suppress is taken from the preliminary hearing transcript dated October 3 and October 6, 2008.

Maria Pulido answered the door in response to Pumarino's knock. Ms. Pulido indicated she lived in the house with some small children and her brother, appellant, who was on parole. She also mentioned that parole authorities had recently searched the residence. When Pumarino asked Ms. Pulido if the two deputies could check the interior of the residence, she granted the officers permission to do so. After giving the officers consent to check the house for the person with the gun, she called her children to come outside while the officers did a sweep of the house. While in the house, the officers went to the room that had marijuana inside and pushed the door open. At some point later, Cavazos contacted one of the sergeants from the gang unit who informed him that there was a person named Pulido who was on parole residing at that residence.

Appellant contends that the search of the residence violated the Fourth Amendment's prohibition against unreasonable search and seizure in that no search warrant was obtained. Respondent contends that the search was lawful because of exigent circumstances, the plain view rule, consent to search and appellant's parole status. The trial court denied the motion on the grounds of exigent circumstances and consent to search.

DISCUSSION

Standard of Review

The parties agree that an appellate court independently reviews whether a search was constitutionally reasonable. (*People v. Weaver* (2001) 26 Cal.4th 876, 924; *People v. Leyba* (1981) 29 Cal.3d 591, 597.) As to the factual findings made by the trial court, the appellate court will uphold them if they are supported by substantial evidence. (*People v. Leyba, supra*, at p. 597.)

Exceptions to Search Warrant Requirement

Searches and seizures inside a residence without a warrant are presumptively unreasonable. (*Mincey v. Arizona* (1978) 437 U.S. 385, 390.) Having probable cause to search a residence alone does not provide an officer with constitutionally sufficient

grounds to enter that home without a warrant. (*Vale v. Louisiana* (1970) 399 U.S. 30, 34.) In such cases, it is the prosecution's burden to establish either that no search occurred or that the search undertaken by the officers was justified by one of the exceptions to the warrant requirement. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.) Exceptions to the warrant requirement include exigent circumstances and consent. (*People v. Coddington* (2000) 23 Cal.4th 529, 575; *People v. James* (1977) 19 Cal.3d 99, 106.)

Exigent Circumstances

When there is a compelling circumstance requiring immediate police action to prevent imminent danger to life or welfare, compliance with the warrant requirement is excused. (*Minnesota v. Olson* (1990) 495 U.S. 91, 100; *People v. Coddington, supra*, 23 Cal.4th at p. 580.)

Exigent circumstances existed in this case, justifying the officers' arrival at 837 South Maple. Appellant's argument that exigent circumstances did not justify the officers' arrival at 837 South Maple because no one had specifically identified that residence as the location of where hostages were being held at gunpoint is without merit. The emergency call was a serious one in which lives were potentially at stake. The initial address to which the officers were dispatched did not uncover a hostage situation. Dispatch was unable to recontact the 911 caller, but through GPS sources was able to identify the location of that call to the west of where the officers had originally been sent. Having then moved one block west, they attempted to locate a residence with the same address number as the original call (837) and approached that house. As they did so, they smelled marijuana. Thinking there could still be hostages whose lives were threatened in that building, they knocked on the door, obtained consent to enter and performed a protective sweep through the house. Until that sweep was completed, they were operating under exigent circumstances in an effort to prevent injury or death to unnamed hostages. Their conduct was reasonable and in direct response to the urgency of the 911

call. Accordingly, they were not required to first obtain a search warrant before entering the house.

Appellant cites *United States v. Deemer* (9th Cir. 2004) 354 F.3d 1130 (*Deemer*), but the facts of that case are not apposite to this case. In *Deemer*, officers received a 911 call from an intoxicated male who said “911” and then hung up. The 911 system indicated that the call originated from room 105 of the Royal Suite Lodge. However, an officer testified he was uncertain that the call had even originated from room 105 because 911 calls from the lodge often are displayed as originating from that room regardless of origin. When the officers arrived, there was no response from inside room 105 when they knocked. They saw no light and heard no sounds coming from within the room. They then decided to investigate whether the call came from an adjacent room (room 404). The occupant of room 404 denied she had made the 911 call. The officers heard movement and subsequently entered “to make sure that everyone was all right” and located defendant in the bathroom with what appeared to be a methamphetamine laboratory on a table in the living area. (*Id.* at p. 1132.) The Court of Appeals reversed the conviction, finding that the police had insufficient reason to believe that the possible emergency that triggered the 911 call originated in room 404. While the police may have thought there was an emergency somewhere in the motel, there were insufficient facts to create a nexus between that emergency and room 404 to justify a warrantless search. (*Id.* at p. 1133.)

Our case, unlike *Deemer*, contains evidence suggesting to the officers that the 911 call originated at 837 South Maple Street rather than 837 South Elm Street. Moreover, the content of the 911 call was specific and highly serious in this case. Hostages and a weapon were specifically mentioned. In *Deemer*, the caller seemed intoxicated and merely said “911.” Under the circumstances, the officers in this case were justified in believing that the hostage situation reported in the 911 call originated from 837 South Maple rather than from 837 South Elm.

Consent

A free and voluntary consent excuses the need for a search warrant. (*People v. James, supra*, 19 Cal.3d 99, 106.) The voluntariness of the consent depends on the totality of the circumstances. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 232-233.)

The uncontradicted facts are that Ms. Pulido was asked if the officers could go into the house to look for a person with a gun. She gave the permission to do so. There is no indication in this record that her consent to search the house was not free, not voluntary or that the officers statements to her were pretextual for an unlawful purpose. Thus, lawful consent was obtained prior to entry and no search warrant was required.

DISPOSITION

The judgment is affirmed.